STATE OF MICHIGAN

COURT OF APPEALS

ADDMS GUARDIANSHIP SERVICES, INC., Conservator for JEFFREY ALLAN, and BETH ALLAN,

Plaintiffs-Appellees,

v

WILLIAM BEAUMONT HOSPITAL and RIZWAN QADIR, M.D.,

Defendants-Appellants.

UNPUBLISHED
February 1, 2007

No. 268443
Oakland Circuit Court
LC No. 2005-064730-NH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. "Generally, judicial decisions are given full retroactive effect." *Adams v Dep't of Transportation*, 253 Mich App 431, 435; 655 NW2d 625 (2002). Where injustice might result from full retroactivity, courts have at times given their holdings limited retroactive effect or prospective effect only. *Lindsey v Harper Hosp*, 455 Mich 56, 68; 564 NW2d 861 (1997). Prospective application only is appropriate when a holding "overrules settled precedent or decides an issue of first impression whose resolution was not clearly foreshadowed." *Holmes v Michigan Capital Medical Ctr*, 242 Mich App 703, 713; 620 NW2d 319 (2000). However, "[t]he fact that a decision may involve an issue of first impression does not in and of itself justify giving it prospective application where the decision does not announce a new rule of law or change existing law, but merely gives an interpretation that has not previously been the subject of an appellate court decision." *Jahner v Dep't of Corrections*, 197 Mich App 111, 114; 495 NW2d 168 (1992).

This Court in *Vega v Lakeland Hosp at Niles & St Joseph, Inc*, 267 Mich App 565; 705 NW2d 389 (2005), did decide an issue of first impression. However, it did not overrule existing case law or settled precedent. Nor did it announce a new rule of law; the law already existed as codified by MCL 600.5851. Thus, the *Vega* Court was simply the first court to interpret the language of the statute, and its result was clearly foreshadowed by the clear and unambiguous language used by the Legislature. I would conclude that *Vega* applies retroactively and that the trial court erred in ruling otherwise.

The parties agree that if *Vega* applies retroactively, certain aspects of plaintiffs' complaint may be time-barred. However, they disagree regarding whether the notice of intent

provided sufficient notice of the allegations of malpractice. It appears that the trial court never considered this issue. Because appellate review is generally limited to issues actually decided by the trial court, *Allen v Keating*, 205 Mich App 560, 564-565; 517 NW2d 830 (1994), I would decline to consider this matter and would remand for further proceedings.

/s/ Kathleen Jansen